



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: March 2, 2015

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division
Brian Kuhn, Director, Plant Industry Bureau

SUBJECT: Plant Inspection and Pest Control; Rulemaking Scope Statement

TO BE PRESENTED BY: Christopher Deegan

REQUESTED ACTION:

At the March 11, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) to create a DATCP rule related to the import of plants and plant products that may introduce a pest known as the Mountain Pine Beetle (MPB) into Wisconsin. The proposed rule may establish a DATCP quarantine to restrict the movement of regulated items into Wisconsin from areas known to be affected by MPB.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for permanent rule changes on February 26, 2015 thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the March 2, 2015 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 21, Wis. Adm. Code (Existing)

Relating to: Plant Inspection and Pest Control

1. Description of the objective of the rule:

This proposed rule would modify current plant pest control rules related to the import of plants and plant products that may introduce a pest known as the Mountain Pine Beetle into Wisconsin. This rule will explore the following mitigating actions:

- Establish a quarantine that will restrict the movement of regulated items into Wisconsin from or through states and provinces known to be affected by Mountain Pine Beetle (MPB).
- Provide an exemption for articles that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official.
- Provide an exemption for businesses that enter into a state compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. DATCP administers laws related to the control of plant pests. DATCP has authority under s. 93.06 (1p), Wis. Stats., to provide inspection and testing services related to all DATCP programs. DATCP has authority under s. 93.07 (12), Wis. Stats., to conduct surveys and inspections for the detection and control of pests injurious to plants, and to make, modify, and enforce reasonable rules needed to prevent the dissemination of plant pests. DATCP also has plant inspection and pest control authority under s. 94.01, Wis. Stats. DATCP may by rule impose restrictions on the importation or movement of serious plant pests, or items that may spread serious plant pests.

The Mountain Pine Beetle (Coleoptera: *Dendroctonus ponderosae*) has been described as the most destructive pest of mature pines in North America. Its four major host species are ponderosa, lodgepole, sugar and white pine, but MPB has been recorded attacking at least a half-dozen other native pine species. The current unprecedented outbreak of MPB is now spread over 88 million acres of pine forests in Colorado, Wyoming, Idaho, Montana and South Dakota, as well as the Canadian provinces of Alberta and British Columbia. Estimates of pine mortality in infested forests can reach 80%.

While this beetle is believed to be native to North America, it has been limited to western pine forests from Mexico to central British Columbia. To date, no MPB populations have been found in the United States east of the Black Hills area of South Dakota. This rule establishes a DATCP quarantine for MPB to ensure that potentially infested material cannot be moved into Wisconsin from states and provinces known to be affected by MPB.

The most common pathway for introduction of MPB is in untreated or raw pine wood, including logs, burls, stumps, firewood, green lumber and wood packing material. Nursery stock and natural spread are other potential pathways. Movement of untreated pine wood from western states to the east is uncommon, but it can occur. Pulp mills, saw mills and campgrounds may be the most likely pathways for the eastern movement of MPB.

Red pine, jack pine and eastern white pine are the most common commercially significant pine species in Wisconsin. Recent research indicates all three species to be viable hosts for MPB. According to the Wisconsin Dept. of Natural Resources (DNR), over 3.5 billion cubic ft. of pine growing stock is present in the state. Wisconsin's State Forests are dominated by pine forest types, occupying about 22% of total state timberland area (an estimated 43 million trees on state land alone). As a whole, pine species comprise about 10.7% of Wisconsin's forest areas. About 59 million cubic ft. of Wisconsin pine are removed as timber annually, accounting for 23% of the total annual commercial timber harvest. The current annual stumpage value of Wisconsin's pine resource is estimated by DNR to be about \$38 million. That number climbs to over \$70 million if processed or finished pine products are included.

Proposed policies. This proposed rule will establish a quarantine for MPB to protect the forest pine resource in Wisconsin. Regulated items, including firewood, will not be allowed into Wisconsin from states or provinces known to be affected by MPB.

Policy Alternatives. If DATCP does nothing, Wisconsin's pine resource will be increasingly vulnerable to MPB. If MPB becomes established in Wisconsin, it could kill millions of pine trees and adversely affect our forest products industry. Potential impacts to forest ecology are also possible, including changes in forest fire risk, snow accumulation, soil erosion and water retention rates.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.06 (1p), 93.07 (12), and 94.01, Wis. Stats.

93.06 Department powers. The department may:

(1p) SERVICE TESTING RELATED TO DEPARTMENT PROGRAMS. Provide inspection services, diagnostic services and analytical or testing services upon request if the requested service is related to an authorized department program and serves program objectives. The department may charge a fee to cover its cost to provide the requested services.

93.07 Department duties. It shall be the duty of the department:

(12) PLANT PESTS. To conduct surveys and inspections for the detection and control of pests injurious to plants, make, modify, and enforce reasonable rules needed to prevent the dissemination of pests, declare and manage emergencies relating to the detection and control of

pests injurious to plants, provided that such declaration does not supersede the authority of the chief state forester under s. 23.114 or the department of natural resources under s. 26.30, and suggest methods of control.

94.01 Plant inspection and pest control authority.

(1) In the conduct of survey and inspectional programs for the detection, prevention and control of pests, the department may impose quarantines or such other restrictions on the importation into or movement of plants or other material within this state as necessary to prevent or control the dissemination or spread of injurious pests.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.1 FTE staff time to develop these rules. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This rule will affect any person or business in a state or province known to be affected with MPB that exports or transports regulated articles to or through Wisconsin. This rule will also affect any Wisconsin person or business that wishes to import regulated articles into Wisconsin.

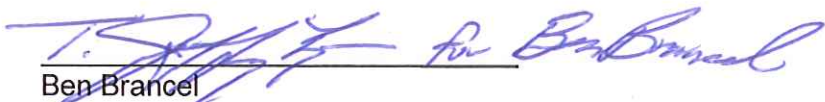
6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

DATCP rules prohibit imports from any federally quarantined area, except under authorized conditions. Federal regulations related to the quarantine of specific exotic plant pests currently include gypsy moth, emerald ash borer, Asian longhorn beetle and others. However, there is no federal quarantine for MPB, nor is one expected. This proposed rule is consistent with current state and federal rules.

7. Anticipated economic impact

DATCP expects the proposed rule to have minimal economic impact statewide and locally. Data from the latest U.S. Forest Service Timber Products Report for Wisconsin (2008) indicates that 94% of pine wood utilized by Wisconsin's timber industry is harvested from within Wisconsin. Of the remainder, about 4% comes from Michigan, 1% from Minnesota, and 0.5% from Canada. Less than 0.5% of pine is sourced from western states that may be affected by MPB. Implementation of an exterior quarantine will reduce the risk of MPB negatively impacting Wisconsin's pine wood products industry, valued at \$70 million annually.

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Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection


Date Submitted